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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,863	10/17/2003	Richard Allen	51984-292915	9575
25764 7590 06/12/2008 FAEGRE & BENSON LLP PATENT DOCKETING 2200 WELLS FARGO CENTER 90 SOUTH SEVENTH STREET MINNEAPOLIS, MN 55402-3901				
EXAMINER				
BRADFORD, CANDACE L				
ART UNIT		PAPER NUMBER		
3634				
MAIL DATE		DELIVERY MODE		
06/12/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/687,863

Applicant(s)

ALLEN ET AL.

Examiner

CANDACE L. BRADFORD

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 2/19/08 amendment.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 24, 25, 27 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Wegner (5544689). Wegner discloses a vertical jambs 40, comprising vertical channels comprising a upper window sash of a door, as best seen in Figure 1, a window sash movable in the vertical channels, a retractable screen assembly attached to the door comprising a roller 12, a flexible screen 16, attached to the top and bottom of the door and at a first and second end to the movable sash, a biasing mechanism/constant force spring 34, adapted to apply a torque to the roller generating a positioning force on the window sash, such that the window sash can be positioned at an infinite number of locations along the vertical channels operated by a sash positioning device.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 7-10, 12-23, 29, 30 and 32-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wegner (5544689). Wegner discloses vertical jambs 40, comprising vertical channels, as best seen in Figure 1, a window sash movable in the vertical channels, a retractable screen assembly attached to the door comprising a roller 12, a flexible screen 16, attached at a first and second end to the movable sash, a biasing mechanism/constant force spring 34, but fails to teach a biasing mechanism adapted to apply a torque to the roller generating a positioning force on the window sash equal to at least 5%-20%, 40%, 50%, 60% or 80% of the force of gravity acting on a window sash, such that the window sash can be positioned at an infinite number of locations along the vertical channels. It is commonly known in the art that the biasing mechanism can be adjusted to that the positioning force comprises various percentages of the force of gravity acting on the window sash.

Therefore, it would have been further obvious in view of the structure advanced above to provide a method of operating a movable sash in a door, which can be slidably engaged/attached with a window sash, apply a positioning force to the window sash, retracting/drawing the flexible screen, retaining a portion of the flexible screen in the vertical channels, applying a breaking force when the sash moves in a downward

direction, releasably engaging the sash positioning device with at least one contact surface, continuously applying torque to the roller, while producing no new and unexpected results.

Claims 3, 4, 11, 26 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wegner (5544689) as applied to claims 1, 2, 7-10, 12-22, 29 and 30 in view of Thomas et. al. (6618998). Wegner as advanced above fails to disclose a counterbalance system for a hollow core door as a lower window sash. Thomas teaches the utility of a counterbalance system, as recited in column 1, lines 32-34 and a hollow core door as recited in column 3, lines 56-60. The use of a hollow core door is commonly used in the art because they are lightweight and durable, the use of counterbalance allows for various positioning of the sash. Therefore, it would have been obvious to one of ordinary skill in the art to provide the window screen attachment system of Wegner with a counterbalance system and a hollow core door as taught by Thomas et. al. so as to provide a light weight durable door and to allow for various positioning of the sash.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wegner (5544689) as applied to claims 1, 2, 7-10, 12-22, 29 and 30 in view of Kissinger (6082432). Wegner as advanced above fails to disclose a frictional force acting between the window sash and the vertical channels. Kissinger teaches the utility of a frictional force as recited in column 4, lines 63-67. The use of frictional force is commonly used in the art to position the sash at various locations in the channels. Therefore, it would have been obvious to one of ordinary skill in the art to provide the

window screen attachment system of Wegner with the frictional force acting between the window sash and the channels as taught by Kissinger so as to allow for the window sash to be positioned at various locations in the channels.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wegner (5544689) in view of Kissinger (6082432) as applied to claims 1, 2, 5, 7-10, 12-22, 29 and 30 in view of Wegner (5787952). Wegner (689) in view of Kissinger as advanced above fails to disclose frictional force combined with torque to retain the window sash. Wegner (952) teaches the utility of torque in combination with frictional force is commonly used in the art to position and retain the sash at various locations in the channels. Therefore, it would have been obvious to one of ordinary skill in the art to provide the window screen attachment system of Wegner (689) with the frictional force acting between the window sash and the channels as taught by Wegner (952) so as to allow for the window sash to be positioned at various locations in the channels.

Response to Arguments

Applicant's arguments filed 2/19/08 have been fully considered but they are not persuasive. The applicant's attention is drawn to page 12 of the remarks. The applicant states the Wegner reference fail to teach a biasing mechanism 'adapted to' apply torque to a retractable screen assembly roller generating a positioning force of a window sash equal to at least 50% of the force of gravity acting on the window sash. As advanced above, it is commonly known in the art that the biasing mechanism can be adjusted so that the positioning force comprises various percentages of the force of gravity acting on the window sash. Further, examiner notes that, as written, the biasing mechanism

merely needs to be capable of applying a continuous torque to the roller. This is functional language, and similar to a "whereby" statement, and it has been held that the functional "whereby" statement does not define any structure and accordingly cannot serve to distinguish. *In re Mason*, 114 USPQ 127, 44 CCPA 937 (1957). It should be noted that the 'new' claim 6 rejection is an correction of an inadvertent typing mistake in failing to also type in Kissinger in the previous office action.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **CANDACE L. BRADFORD** whose telephone number is (571)272-8967. The examiner can normally be reached on 9am until 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine Mitchell can be reached on (571) 272-7069. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/KATHERINE W MITCHELL/
Supervisory Patent Examiner, Art
Unit 3634

Candace L. Bradford
Patent Examiner
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June 5, 2008